

FILED
MAY 19 2006
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK MCCLEARY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. C 04-04851 JSW

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION TO
ENFORCE SETTLEMENT
AGREEMENT AND DISMISSING
MATTER WITH PREJUDICE**

This matter comes before the Court upon consideration of Defendant's Motion to Enforce Settlement Agreement. The Court has carefully considered the parties' pleadings, relevant legal authority, and the record in this case, and it also has had the benefit of oral argument.

On December 23, 2005, Magistrate Judge James issued an Order setting forth the terms of the settlement in this matter. The Defendant has fulfilled two of the three obligations it was required to fulfill, but has not yet paid Plaintiff a settlement payment of \$100.00. Defendant objects to paying the \$100.00 because Plaintiff was not willing to sign a written settlement agreement, which Defendant believes embodies the terms of Judge James' Order dated December 23, 2005. That proposed agreement contains additional terms to which Plaintiff objects. Notwithstanding the views Plaintiff expressed at the hearing about the terms as set forth in Judge James' Order dated December 23, 2005, the main dispute pertains to release language.

Having considered the parties' positions, the Court concludes that Plaintiff shall not be required to sign a written document setting forth the terms of the parties' settlement, and

1 Defendant's motion accordingly DENIED IN PART. This Order and the terms set forth herein
2 shall be deemed the written embodiment of the parties' settlement agreement and shall include
3 release language that references not only Defendant, but also its agents, employees, and
4 servants, as well as Plaintiff and his heirs, executors, administrators, and assigns. To the extent
5 Defendant sought to include such language in the written embodiment of the settlement
6 agreement, Defendant's motion is GRANTED IN PART.

7 Accordingly, it is HEREBY ORDERED, that the above entitled action is settled and
8 compromised under the following terms and conditions:

- 9 1. Plaintiff shall receive a written apology from the U.S. Postal Service.
- 10 2. The U.S. Postal Service shall conduct a training session using Plaintiff's incident
11 as a teaching tool. Plaintiff's language [as set forth in Judge James' Order dated
12 December 23, 2005] shall be used during the training session.
- 13 3. The training session shall occur at the Embarcadero location only.
- 14 4. The training session shall occur no later than 45 days after December 23, 2005.
- 15 5. Defendant shall remit the agreed settlement payment of \$100.00 as soon as
16 possible and practicable, *but in no event later than June 2, 2006.*
- 17 6. This Settlement Agreement releases the Defendants, and its agents, employees,
18 and servants, and Plaintiff, and his heirs, executors, administrators, and assigns
19 from any claims or potential claims, known or unknown arising from the same
20 subject matter that gave rise to the above-captioned lawsuit.

21 It is FURTHER ORDERED that this matter is dismissed with prejudice.

22 **IT IS SO ORDERED.**

23
24 Dated: **MAY 19 2006**


JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MCCLEARY,

Plaintiff,

v.

UNITED STATES OF AMERICA et al,

Defendant.

Case Number: CV04-04851 JSW

CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 19, 2006, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Katherine Burke Dowling
United States Attorney's Office
450 Golden Gate Avenue
Box 36055
San Francisco, CA 94102-3495

Mark McCleary
Thelen Reid & Priest LLP
101 Second Street
San Francisco, CA 94105-3606

Dated: May 19, 2006


Richard W. Wieking, Clerk
By: Lashanda Scott, Deputy Clerk